



# City of Millbrae

621 Magnolia Avenue, Millbrae, CA 94030

February 28, 2008

Mr. Bruce Wolfe  
Executive Officer  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

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**Subject: Comments on the Tentative Order for the Municipal Regional Stormwater  
National Pollutant Discharge Elimination System Permit**

Dear Mr. Wolfe:

The City of Millbrae appreciates the opportunity to review and comment on the proposed Municipal Regional Stormwater NPDES Permit (MRP). We would also like to take a moment to thank your staff for their hard work on completing the MRP tentative order.

The proposed MRP is a 189-page massive document Board staff has been working on since the beginning of 2005. The tentative order was subsequently issued in December 2007. We understand the efficiency to combine many individual permits into a single regional permit covering all 77 municipalities in all five Bay Area counties. However, we have major concerns on some of the proposed permit language.

It took the Board staff almost three years to draft the tentative order. However, in the Tentative Order municipalities are given as short as four months to begin implementing some of the MRP requirements. Many municipalities including Millbrae will likely not be able to comply by the July 1, 2008 deadline. We request more opportunity for dialogue with Board staff on the key issues before the MRP is adopted by the Water Board. We are very concerned that we like many other municipalities will not be able to comply with the MRP and as a result will be subject to violations and potentially exposure to legal challenges and lawsuits.

The MRP places an enormous emphasis on annual reporting. The amount of time and effort needed to expend on the new annual reporting requirements is significant. It is likely we will have to increase our staffing level just to comply with the new reporting requirements but we have no means to increase stormwater revenues to do this. Again, many municipalities including Millbrae will likely be in violation because it will be difficult if not impossible to comply with all of the new reporting requirements. It makes more sense to us that our limited resources be allocated to other water quality beneficial activities such as performing inspections, street sweeping and public outreach and education. They should not be dedicated strictly to reporting requirements. Appendix L in the Tentative Order for example contains the annual report form which is a 110-page document that will require a significant amount of staff time to complete. Furthermore, we have been submitting annual reports to the Board since the adoption of the original Stormwater NPDES permit but we have rarely received any feedback from the Board.

City Council/City Manager (650) 259-2334	City Clerk (650) 259-2334	Public Works/Engineering (650) 259-2339	Recreation (650) 259-2360	Police Department (650) 259-2300
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Why are municipalities required to spend an extraordinary amount of time on reporting when we are not receiving any feedback? How will these new reporting requirements improve water quality?

Section C9 of the MRP deals with pesticide control. We are all aware that pesticides cause significant water quality degradation and whatever we can do to eliminate the use of pesticides could greatly improve not only water quality but also ensure a healthy environment for our planet. On February 15, 2008, a front page San Francisco Chronicle news article advertised State's plans to do a regional pesticide spraying over Bay Area cities. This would be a serious violation of the MRP had the MRP been adopted and implemented already. This is an example where municipalities have no control over widespread use of pesticide within our respective jurisdictions. Section C.9.e of the MRP requires local municipalities to participate in regulatory processes and yet many of the local municipalities do not have such authority. We are not involved in the decision making processes of other State agencies. The Water Board is more suited to deal with policy issues such as the planned pesticide spraying event.

Also, many of the local municipalities do not have the funding mechanism needed to increase revenue to implement many of the requirements in the MRP. Stormwater fees are subject to Proposition 218 and we greatly need the Water Board's support in making some fundamental changes at the State legislature level so revenue can be generated to implement many of the programs in the MRP. For example, Millbrae established its Stormwater Enterprise Fund in 1996 and has been collecting approximately \$230,000 annually to fund NPDES activities; however, the yearly expenditures have outpaced the annual revenue for many years now and the Millbrae General Fund is subsidizing the Stormwater Enterprise Fund. We do not believe the subsidy can be sustained for much longer without impacting public safety programs or without a new revenue source to fund the extra activities prescribed in the MRP.

The following is a list of some of the specific concerns we have on the MRP:

- C.2.b. Sweeping Equipment Selection and Operation. We are questioning the reasons for requiring 75% of replaced street sweepers to have particulate removal of regenerative air sweepers or better. Many small municipalities such as Millbrae only have one street sweeper and we need to consider our operational needs and local conditions when purchasing a street sweeper. Water Board staff should substantiate the reasons for this requirement. We request technical reports, studies, or other technical memorandum from the Water Board that these sweepers are technically suitable to meet a small city's needs, especially in steep hilly terrain. We request that the Water Board provide grant funds to assist with the purchase of these sweepers if this requirement is to remain in the permit language. We believe this section of the MRP violates Section 13360(a) of the California Water Code.<sup>1</sup>

<sup>1</sup> 13360. (a) No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner. However, the restrictions of this section shall not apply to waste discharge requirements or orders or decrees with respect to any of the following:

- C.2.f. Catch Basin or Storm Drain Inlet Inspection and Cleaning. The City of Millbrae cannot trespass onto private properties to inspect and clean privately owned storm catch basins. Furthermore, use of public funds to clean private catch basins is against the State law. Most small municipalities such as Millbrae are non-chartered cities and we must adhere to State law which prohibits the use of public funds on maintaining private properties and facilities. This section of the permit needs to be revised to reflect that only publicly owned catch basins be inspected and cleaned and maintained annually.
- C.2.g. Stormwater Pump Stations. The permit language should be clarified to only require municipalities to inspect and maintain only those pump stations owned and operated by them. Again, State law prohibits the use of public funds on maintaining and repairing privately owned facilities. Sampling and "first flush" requirements are burdensome to many small municipalities such as Millbrae as our maintenance crew is dispatched to clear blocked catch basins, clear debris in gutters and other inclement weather activities to prevent flooding and to ensure public safety. The MRP permit language appears to be in conflict not only with State statutes in this area; but also Millbrae Municipal Code Section 8.20.330 which prohibits discharge of storm water or uncontaminated water into the City's wastewater collection system. Section 8.20.330 of the Millbrae Municipal Code was adopted in 1996 as a result of the original Stormwater NPDES permit under MS4 that separated storm and sanitary sewer collection systems.
- C.3.a.ii. New Development and Redevelopment Performance Standard Implementation. The schedule for implementing the performance standard is unrealistic. It took Water Board staff several years to draft the permit language and yet municipalities are required to begin implementing these performance standards by July 1, 2008. We urge the Board to reconsider this and to allow more time for municipalities to phase in these requirements. We do not yet have enough data to support implementing these performance standards and a gradual phase in of these performance standards will allow Water Board staff and municipalities' staff to work together in implementing performance standards that are achievable.
- C.3.b.i.(4) Regulated Projects-New Road Projects and C.3.b.i.(5)-Road Expansion or Rehabilitation Projects. The new requirements will only serve to add more to the existing extreme burden facing many municipalities who have for years lacked the funding needed for streets maintenance and repairs. Recently, this problem was exacerbated even more due to the State taking gasoline taxes and Proposition 42 funding for municipal roadway projects due to State's general fund deficit. Additionally, many of the Surface Transportation Program Federal Grants do not allow grant money to be used for "amenities" such as storm water treatment or landscaping. Many small municipalities rely heavily on Federal grant funds for street projects including Millbrae. We recommend that public works projects such as street resurfacing and rehabilitation projects be removed from the Regulated Projects list. We are also questioning why

CalTrans new roadway projects be exempted from this requirement while other municipalities must meet this requirement? CalTrans roadway projects are typically much larger in scale compared to our local roadway projects and therefore create much more impervious surface than local municipal projects. Exempting their projects from this requirement appears to be discriminating against local municipalities.

- C.5.d. Collection System Screening-Municipal Separate Storm Sewer (MS4) Map Availability. MS4 system maps are sensitive documents and making them available to the public may pose security breaches and terrorism threats to our infrastructure. There are other mandates from Homeland Security that most municipalities must also comply with to protect against security breaches and potential acts of terrorism. We request that the Water Board consult with Homeland Security before requiring that this sensitive map information be made available to the public. Additionally, the requirement to have one checkpoint per square mile seems arbitrary and not based on scientific data or any technical considerations. Lastly, the requirement to video inspection storm drains will only provide information on the structural integrity of the pipeline itself. It will not provide water quality benefits which are the intended purpose of the MRP. Once again, municipalities have no means available to them to increase revenues to fund such inspections beyond raising local taxes which must be approved by voters. Or, with assistance from the State particularly the Water Board to pass legislations whereby municipalities can raise storm water fees and not be subjected to the constraints of Proposition 218.
- C.6.h. Tracking and Reporting. Millbrae does not object to having to track and report these inspections but the permit language appears to be overly restrictive requiring electronic reporting of these inspections. We believe flexibility should be afforded on how inspection results are reported to the Water Board. We also recommend that the Board consider creating a web-based reporting site such as the SSO reporting website if electronic reporting is required under the MRP. This will alleviate the financial burden placed on local municipalities for such reporting and would result in a standardized reporting format.
- C.7.b. Advertising Campaign. Millbrae does not agree that permittees shall be responsible for a media campaign on the negative impacts of pesticides on water quality. MRP permittees are not the regulatory agencies on the sale and distribution of pesticides in our jurisdictions. We believe the Water Board needs to work with appropriate regulatory State agencies to regulate the use of pesticides and to ban the availability of pesticides for public use. In addition, the requirement to conduct pre and post surveys, places an additional unfunded burden on municipalities.
- C.7.g. Citizen Involvement Events. It appears that this section of the MRP is duplicative to Section C.7.e. Public Outreach Events and also to Section C.7.h. School-Age Children

Outreach. The three major tasks are almost identical in nature. Our citizens are constantly participating in public outreach events. We believe C.7.h. should be included in C.7.e. Millbrae is objecting to this section of the MRP, not because we disagree with Water Board that citizen participation especially school age children is not important, but simply because of the additional annual reporting burden placed on municipalities. We have very limited resources to comply with these new requirements in the MRP. We do not have anyone on staff who we can dedicate just to comply with the proposed annual reporting requirements.

- C.7.i. Research Surveys, Studies, Focus Groups. It is our opinion that this goes beyond the MRP. Municipalities are the enforcers of the MRP, not researchers. We believe the Water Board is better suited to conduct these surveys and studies and to publish these findings to municipalities which we can use to better enforce the MRP based on past experience.
- C.9.e. Track and Participate in Relevant Regulatory Processes. Participation in Federal and State regulatory processes on the use and handling of pesticides is beneficial but to add this as a requirement of the MRP we believe is beyond the Federal Clean Water Act. The Water Board should be the State agency to begin dialogue with the USEPA and the California Department of Pesticide Regulation on the impacts pesticides pose to water quality. Local municipalities are the enforcers of these laws and regulations. We do not make laws concerning the use of pesticides by the community at large. Cities such as Millbrae in San Mateo County have adopted and had in place an Integrate Pest Management (IPM) policy for years. We already have very strong programs regulating our City use of pesticides use; however, any member of the public can walk into any home improvement stores such as OSH and Home Depot and purchase gallons of pesticides for their own use. We strongly encourage the Board to work with all relevant regulatory agencies to move towards banning the manufacturing and sales of these toxic chemicals which are currently easily available to the public. We believe this is a leadership role for the State and the Water Board. It is the source of pesticides which needs to be eliminated in order to improve water quality. Municipalities have little to no control over their use beyond use on public lands.
- C.10.a. Pilot Trash Control Implementation. The requirement to identify 10% of an urban and/or suburban land area within their respective jurisdictions to implement the pilot trash control program seems arbitrary. Why 10%? Why not 100%? We propose this section of the MRP be eliminated. We request the Water Board and municipalities work together in minimizing litter and trash in our communities and not waste very limited resources on more pilot programs that may or may not lead to any conclusive results. Millbrae is also the first city in San Mateo County to ban the use of polystyrene foodwares since 2007 in its effort to minimize impact of trash on water quality.

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We strongly urge the Board to consider our comments and to hear comments from other municipalities and stormwater management agencies at the Public Hearing scheduled for March 11, 2008 and direct Board staff to work with all permittees to modify the MRP tentative order to allow more flexibility and more time for implementing the MRP. We also agree and support the comments submitted by the San Mateo County Water Pollution Prevention Program as well as the Bay Area Stormwater Management Agencies Association. We understand the MRP is intended to safeguard our environment and Millbrae has every intention to comply as best we can; however, there are still many proposed permit requirements which will be a significant challenge not just for Millbrae but other municipalities as well. We do not understand why the Water Board would want to adopt a permit knowing in advance that many municipalities will have difficulty enforcing the permit. This action would only serve to open the door for legal challenges from environmental organizations when local municipalities cannot fully implement the requirements of the MRP. We much prefer to work together with your staff to do what is immediately practical and begin working on plans and requirements which can be effectively implemented in the future to protect and improve water quality and our environment.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ralph Jaeck", written in a cursive style.

Ralph Jaeck  
City Manager

cc: Millbrae Mayor and City Council  
Joan Cassman, City Attorney  
Ron Popp, Public Works Director